



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201016092

JAN 29 2010

Uniform Issue List: 408.03-00

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SE:T:EP:RA:T

**Legend:**

Taxpayer A	=	***
Financial Advisor L	=	***
IRA X	=	*** ***
Institution A	=	***
Institution N	=	***
Company F	=	***
Address A	=	*** ***
Amount A	=	***
Date 1	=	***
Date 2	=	***
Date 3	=	***
Date 4	=	***
Date 5	=	***
Date 6	=	***

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Date 7 = \*\*\*

Date 8 = \*\*\*

Date 9 = \*\*\*

Dear \*\*\*:

This is in response to your request dated August 17, 2009, and supplemented by your facsimile dated October 28, 2009, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 59, represents that he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by Institution A.

Prior to Date 1 Taxpayer A maintained IRA X with Institution A. Also prior to Date 1, Taxpayer A spoke to a representative at Institution A, who informed him that Taxpayer A could withdraw Amount A from his IRA, use it during the 60-day rollover period and redeposit the funds within the 60-day rollover period. Taxpayer A states that he planned to get a loan from Institution N to repay Amount A and that Institution N informed him that when it approved the loan to him for Amount A it would send a check for Amount A directly to Institution A to be deposited into IRA X.

Taxpayer A states, and the documentation shows, that on Date 1 he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that he provided Address A to Institution N as the address to mail the check for Amount A to Institution A because Address A was the address for Financial Advisor L provided by Institution A on Taxpayer A's most recent IRA X statement, which was the statement dated Date 1 that was sent to Taxpayer A by Institution A when Amount A was distributed. Taxpayer A has submitted a copy of the IRA X statement listing Address A for Financial Advisor L. On Date 2, Institution N mailed a check for Amount A to Address A intended for Financial Advisor L. The documentation shows that the check was delivered to Address A on Date 3, which was within the 60-day rollover period.

Taxpayer A states that he called a representative of Institution N the week following Date 2 who confirmed that the check for Amount A was mailed by courier to Address A. Taxpayer A states that since he had confirmed that Institution N had timely mailed the check for Amount A to Address A, he did not perform any additional follow-up.

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Accordingly, Taxpayer A represents that he did not discover that the check from Institution N for Amount A had not been properly deposited in IRA X until he received his next quarterly account balance statement from Institution A on Date 4. Taxpayer A states that he immediately called Institution A and was told that it had not received the check. Taxpayer A states that he then called Institution N, which confirmed that it sent a check for Amount A to Address A. The documentation shows that Company F, which Institution N used to mail the check for Amount A, delivered the check and left it by the side door at Address A on Date 3.

Taxpayer A then called Financial Advisor L to explain what had happened. After checking the IRA X account statement that was sent to Taxpayer A with the distribution of Amount A, Taxpayer A and Financial Advisor L discovered that Institution A had listed an incorrect address for Financial Advisor L. On Date 5, Taxpayer A stopped payment on the lost check. On Date 6, Institution N reissued a check for Amount A, a copy of which was submitted by Taxpayer A. Thereafter, Financial Advisor L spoke with Institution A, which stated that it would accept a replacement check for Amount A to be redeposited in IRA X. However, on Date 7, Institution A stated that it would not accept the check for Amount A, but would look into the matter again. On Date 8, Institution A agreed to accept the replacement check for Amount A to be redeposited in IRA X, but stated that it would need a ruling from the Service issuing a waiver from the 60-day rollover requirement with respect to Amount A. On Date 9, Institution A deposited the replacement check for Amount A into IRA X, but explained that it would not make a determination as to whether the investment would be a valid IRA rollover.

Taxpayer A has provided copies of both the check for Amount A issued by Institution N on Date 1, and the replacement check that was deposited by Institution A into IRA X on Date 9. Taxpayer has also submitted documentation (i) reflecting the distribution of Amount A from IRA X on Date 1, (ii) showing that Institution A provided Taxpayer A with the incorrect address for Financial Advisor L, (iii) establishing that Institution N mailed a package through Company F to Address A on Date 2, and (iv) confirming that Company A delivered a package to Address A on Date 3. Finally, Taxpayer A submitted statements from Institution A, Institution N, and Financial Advisor L outlining, in a manner consistent with Taxpayer A's assertions, each entity's respective role in the events relevant to Taxpayer A's ruling request.

Based on the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount A from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

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Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if –

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount A within the

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60-day rollover period prescribed by section 408(d)(3) of the Code was caused by Institution A's error in providing him with the incorrect address of Financial Advisor L, which resulted in Amount A not being deposited into IRA X until after the expiration of the 60-day rollover period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed only to the taxpayer who requested it. Section 6110 (k) (3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact \*\*\*\*\* at:  
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,

  
Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:  
Deleted copy of ruling letter  
Notice of Intention to Disclose